Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. _____

In The

# Supreme Court of the United States

Curtis Hart,

Petitioner,

V.

SAFEWAY INC.,

Respondent,

On Petition For, Remedy by, Writ Of Certiorari
to
To THIS STATE's SUPREME 'COURT' de-facto in Oregon

for
Mandamus to the United State Legislature or Executive
to stay "domestic Violence" in Oregon.

## PETITION FOR WRIT OF CERTIORARI

Curtis Hart
General Delivery
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## QUESTIONS PRESENTED

Expanding on Oberg, 512 US 414, 430 (1994): "Oregon's [unique] abrogation of well established common law protections against arbitrary depravation of property raises the presumption that 'ITS' procedures violate the Due Process Clause." Premises, on LUTZ ET, 132 OR 185, In re AH LEE, 5 F. 899, and STATE V. COCHRAN, 55 OR 157; decreeing unconstitutional-ACT empowering GOVERNMENT de-facto is made constitutional, by public acquiescence.

For example, persons who usurp, in Oregon, as 'JUDGES' and 'JUSTICES' in 'COURTS' (THEY admit are de-facto) argue they are 'judges de-facto' with jurisdiction to decree their TRIBUNALS de jure (ORS 1.002; **APP 29**).

Oregon's unique bias, by it's very nature, creates obstructions of Justice, which violate the U.S. Constitution. **ARTICLE IV [VII]**:

"The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States [trial by jury]." Viz: "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion. . . against domestic Violence"

?. Does Due Process require State Courts to exist in Law, or otherwise prohibit 'judicial' attacks upon an individual who exposes a shadow GOVERNMENT de-facto, by uncloaking and/or disrobing persons pretending to be State Judges and/or Justices who are corrupted by unlawful arbitrary powers?

?. Are this Court's Justices, subject to ARTICLE III, and/or ARTICLE IV compelled to take an original action (e.g. a Writ of Error) or otherwise obligated to mandate remedies when a shadow GOVERNMENT de-facto admits bias, against a Citizen, or subjects, to obstruct Justice?

?. Are not all subsidiary questions fairly included in my challenge to arguments of THIS STATE's shadow GOVERNMENT de-facto's claim to exist via plain usurpation?

---

Said questions presented raise issues with this Court's Jurisdiction under Writ of Certiorari. See., Part III; RULE 10: "Review on writ of certiorari is not a matter of right, but of judicial discretion."

(c) a state court [tribunal in Oregon] has decided an important question of federal law that has not been, but should [must] be, [can only be] settled by this Court, [because said] decided an important federal question in a way that conflicts with relevant decisions of this Court; the United States Constitution of America.

This Court's Clerks (1)Assert: "State Courts exist in Oregon and 'Other Jurisdiction' applies only to states suing other states. You cannot file an Original Action." (2)Returned petition with directions to alter format (directive included textual changes). Thereafter, *Complaint* for recusal denied in Oregon.

28 U. S. C. § 2403(a), § 2403(b) and § 1251 May Apply.

## IDENTIFICATION OF KNOWN PARTIES & CORPORATE DISCLOSURE STATEMENT

**Petitioner:**

Appears on cover.

**Respondents:**

The Defendants fall into two categories.

SAFEWAY INC., a Delaware Corporation operating in Oregon under permit from THIS STATE in Oregon.

**BODYFELT MOUNT STROPE, LLP.**
707 SW Washington St., Suite 1100
Portland, Oregon 97205
503 - 243 - 1022

And

Highest TRIBUNAL of the JUDICIAL DEPARTMENT [departure-from what is meant] of government in THIS STATE (defined by ORS 1.002 (1), 131.205, as GOVERNMENT de-facto) supplanting by assuming appearance of the State (a.k.a. Supreme 'COURT' de facto) 'JUSTICES' therein.

**SUPREME COURT BUILDING**
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**THIS STATE'S JUDICIAL DEPARTMENT** represented by:

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## PETITION FOR WRIT

Petitioner MOVES for Disinfection, of an INFECTION of the spinal column of the Law of the Land. Therein, redress from loss of constitutional protections and remedy related to physical injuries.

## OPINIONS BELOW

Petitioner Hart sued for remedy from bodily injury, caused by negligence (or deliberate disregard) and subsequent contract violations by SAFEWAY Inc. CIRCUIT 'COURT' de-facto in Oregon situated defendant beyond jury trial(suit); CIRCUIT transcript - p.13.

> "I don't think I have any choice under the circumstances . . . motion to dismiss the complaint will be allowed." **App. 1**, 2 Aug 3 '06.

Petitioner appealed and filed opening brief, then was compelled by late introduction of transcript to move to correct transcript. CIRCUIT argued lack of jurisdiction to correct transcript; **App 3**, (see **App 5**).

APPEALS 'COURT' de-facto admits unlawfulness of 'ITS' existence is a valid argument; then rejected Petitioner's challenge that their bias rises to the level mandating recusal under Federal Law; **App 5; 6; 7**.

> "Appellant's objections are overruled, and respondent is awarded . . . $721.28." For Hart's criminal Contempt of 'COURTS'; **App 4; 11**.

7/30/07 - 1/11; 4/16; 6/30; 8/25;10/3; 12/10/08- 4/8/09: SUPREME 'COURT' de-facto: (1)denied review; **App 10.** (2)Reconsideration denied; **App 8; 9**. (3)Petitioner on review's declaration, and recusal denied; **App 12.**

## BASIS FOR JURISDICTION IN THIS COURT

The denial of Federal Constitutional Rights by highest TRIBUNAL in Oregon affirming APPEALS 'COURT's' denial of Federal Rights was opened and reaffirmed by TRIBUNAL's order dated **April 8, 2009**.

A petition for remedy was filed to this Court within 90-days of date of (12/10/08) affirming. The Clerk's office remanded with directives to modify. When THIS STATES highest TRIBUNAL (a.k.a. SUPREME COURT) in Oregon finalized by reaffirming denial of all remedy, this Court's Clerk indicated "clock reset on timeliness."**App 12**. Regardless, petition is timely; submitted within 60-days of this Court's remand.

This Court has jurisdiction pursuant to the United States Constitution inclusive; and 28 U.S.C. §§ 1651; 1254(1); 2101; 2106; 2201; 2241& 2; 2254; 1257; Act of 1789; 237: 42 § 1983. R. of U.S. Civ. P. 60(b).

## PROVISIONS INVOLVED

See **App** [C] **13** to **15** specifically: ARTICLES: I; IV; VI and AMENDMENTS: I; IV; V; VII; XIII; XIV.
RULE 60. Directing:

**RELIEF FROM A JUDGMENT OR ORDER**

(b) **Grounds for Relief from a Final Judgment, Order, or Proceeding.** On motion and just terms, the Court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: **App 16**.

**BRIEF - ON JURISDICTION**

The Framers of the Constitution, for the People, of the United States of America, intended that Our supreme Court Justices' **[ARTICLE III]**-

> "Judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, . . . Controversies between a State, or the Citizens thereof, and foreign States, Citizens or Subjects."

THE FEDERALIST No. 80; Alexander Hamilton:

> "The reasonableness of the agency of the national courts in cases in which the **State tribunals cannot be supposed to be impartial,** speaks for itself. **No man ought to be a judge in his own cause, or in any cause in respect to which he has the least interest or bias.** This principle has no inconsiderable weight in designating the federal courts as the proper tribunals for the determination of controversies between different States and their citizens. **And it ought to have the same operation in regard to some cases between citizens of the same State.**"

United States Constitution **ARTICLE IV**, *§ 4*. In a letter (April, 1787) to Randolph, James Madison suggested that "an article ought to be inserted expressly guaranteeing the tranquility of the states against internal as well as external dangers [usurpation]. Unless the Union be organized efficiently on republican principles innovations of a much more objectionable form may be obtruded."

Randolph wanted to stipulate "that no State be at liberty to form any other than a Republican Govt." Wilson then moved, "as a better expression of the idea," almost the present language of ARTICLE IV, Section 4, which was adopted. 1 M. FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787 193-194, 206 (rev. ed. 1937). Randolph asserted: "The Resoln. has 2 Objects. (1.) to secure Republican Government. (2.) to suppress domestic commotions. He urged the necessity of both these provisions." Following speakers alluded to the dangers of monarchy being created peacefully as necessitating the provision. *See* W. WIECEK, GUARANTEE CLAUSE ch. 2 (1972).

No 'political question' relating to which of two governments is de jure - exists, herein. Because, whether a party preserved a constitutional claim is a question of federal law. See, Douglas, 380 U.S. 415, 422; Atlantic Line, 332 U.S. 168, 173 (1947). If political overtones intrude, this Court raised, without deciding, the possibility that the guarantee clause is justiciable; interpreter of "domestic Violence" as a restraint on states. New York v. United States, 505 U.S. 144, 183-85 (1992); Ashcroft, 501 U.S. 452, 463.

Action of APPEALS COURT de-facto in Oregon was in contravention of ARTICLE VI, U. S. Constitution, notwithstanding, is depriving plaintiff in error of rights without due process of law, in violation of the Fourteenth Amendment; also, in contravention of the Fifth Amendment. This Court (also) has jurisdiction under section 709 of the Revised Statutes.

Petitioner asserts that CAREY, 203 OR APP 399 and 342 OR 530 are "abrogations, repugnant to the United States Constitution." In that, biased persons deciding CAREY allege to enact 'SEVEN AMENDMENTS' in a signal so-called Article by extrajudicial FIAT.

Thus, petitioner in aid of this Court's Jurisdiction, challenges said statute on the grounds that 'IT' supplants, unlawfully replaces via plain usurpation, the State of Oregon, causing bias so-called JUDICIAL ACTS in his common law action. The core of Due Process a "meaningful opportunity to be heard," (*LaChance*, 522 U.S. 262, 266) is obstructed.

Under the Constitution, one of this Court's characteristic roles is to interpret the Law. To shirk this responsibility, merely because of significant political overtones, would so shock the American public, the World, as to destroy confidence in the United States of America.

This Court held that Due Process protects all "civil litigants who seek recourse in the courts, either as defendants hoping to protect their property or as plaintiffs attempting to redress grievances." Logan v. Zimmerman, 455 U.S. 422, 429 (1982). As stated in Boddie v. Connecticut, 401 U.S. 371, 377 (1971), "due process requires, at a minimum, that absent a countervailing state interest of overriding significance, persons forced to settle their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard." Also, to protect offenders from violent retaliation (*See* 699 P2d 1113).

This Court should intervene as the procedural bar invoked in Oregon is not an adequate state ground for 'JUDGMENT'. The adequacy of a state law bar to a due process challenge is "itself a federal question." Douglas, 380 U.S. at 422.

The sufficiency of a state-law procedural rule to bar a federal constitutional claim turns not on the state court's characterization of that rule but rather on whether the rule meets the established constitutional standards for adequacy. As Wechsler, 263 U.S. 22, 24 explained:

> "Whatever [traps THIS STATE] springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of Federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice."

In the words of Hildreth's Heirs v. M'Intire's Devisee, 1 J.J.Marsh. 206 (1829 Kt): There is no [Oregon] government in action, excepting GOVERNMENT *de facto*; because all the attributes of sovereignty, have, by usurpation, been transferred from those who had been legally invested with them, to OTHERS, who, sustained by a power above the forms of law, claim to ACT, and do act in their stead.

Federal judges should give consideration to lawful state court decisions, but they must find for themselves the state law if highest tribunal in a State has spoken in contravention of Law, or decided within a period or manner which raise questions about the continued viability of the decision.

## CAUSES FOR PETITION

Petitioner Hart attacks (in every proceeding in Oregon (when bias infects)) the validity of pretend 'COURTS' de-facto that supplant the State of Oregon.

Usurpers argued that even if their so-called APPEALS "COURT de-facto" does not exist in Law, they are not disqualified, by Federal Law from obstructing his appeal and denying Hart all rights to remedy in his bodily injury case. Moreover, these usurpers imposed a criminal contempt fine of $721.28, to obstruct Hart's Federal First Amendment protected activities.

An 1878-ACT, held to be unconstitutional (In re Ah Lee, 5 F. 899), by which the Oregon Suprume[SIC] Court was unlawfully replaced (supplanted) by a new Supreme 'COURT' (CLINE, 10 OR 230); created what was arguably an inferior TRIBUNAL subject to Circuit Court supervisory control; see, Oregon ARTICLE. VII § 9. As COCHRAN, 55 OR 157, recognizes, said inferior tribunal status was negated by usurping (unlawfully replacing) the State Constitution with 'ARTICLE SEVEN (AMENDMENTS)'. See., **App 17 to 34** [{S} 1 - 18].

Said (AMENDMENTS), usurped all of the State of Oregon Government with GOVERNMENT de-facto. By supplanting the Constitutional Courts with 'ITS' own 'COURTS' de-facto, THIS STATE (as) GOVERNMENT de-facto took on the appearance of, and acts in some ways as, the State of Oregon Government; with the exception that no checks and balances on THIS STATE Confederation (super-legislature 'COURT') exist.

GOVERNMENT de-facto in Oregon is unique in the United States "for abrogation of well established common law protections against arbitrary depravation of property raising the presumption that 'ITS' procedures violate the Due Process Clause." Honda Motor Co., v. Oberg, 512 US 414, 430 (1994); STATE EX REL RICO, 355 P.2D 105 (1953) ("We may just as well face the facts of judicial life in Oregon. They are not the same as in other states - our courts do not exercise all the inherent powers of the common law). **App 28**.

By holding in CAREY V. LINCOLN LOAN CO., 203 OR APP 399; 342 OR 530 (2007), that 'ARTICLE SEVEN (AMENDMENTS)' is now LAW, THIS STATE's JUDGES and JUSTICES decreed THEMSELVES as super-legislature.

Said loss of a Republican Form of Government, in Oregon, is established by CAREY (SUPRA), unless the United States Government entered into a treaty recognizing GOVERNMENT de-facto's Confederation in Oregon as de jure. See also, STATE EX REL. LINCOLN LOAN CO., V. COURT OF APPEALS, 336 OR 9 (2003).

The United States Congress' mere recognition of Representatives is not sufficient, nor is "implied subsequent verification" by subjects acting as LEGISLATIVE BRANCH, as the U. S. Constitution's bar is absolute - on such abuse of power for personal gain.

Hence, petitioner Hart, moved for a finding of facts and law (Declaration) on his Federal rights; filing a demand *Complaint* seeking recusal of the so-called JUDGES/JUSTICES he has publicly embarrassed.

The continued failure of THIS STATE's supreme JUSTICES to show cause for jurisdiction, while arguing jurisdiction de-facto, embroiled us in public displays of my contempt for THEM; removing any possibility that THEY are without bias in any case in which I am a party. Petitioner now seeks redress, via equity, or mandamus, in the only Court available.

◆

"Even if CAREY [V. LINCOLN LOAN CO., 342 OR 530] does not dispose fully of [our bias] appellant's argument regarding the [un]lawfulness of the existence of this court, the court rejects appellant's argument that his challenge means that the judges of the court [de-facto*f/n] have such a personal interest in the challenge that they are disqualified [for bias under Federal Law] from deciding the appeal."
(*F/N) See footnote-5 CAREY, **[App {S} 29]**.

◆

Paraphrasing *Justice Scalia*: Perhaps the Court is so enamoured of judges in general that it forgets that they are officers of the Government, and hence proper objects of that healthy suspicion of the power of government to corrupt, which possessed the Framers and is embodied in the Constitution; an obligation on U. S. Citizens too impose as a check and balance to preserve the Union.

This Court's cases use a variety of phrases to describe when a State's process is "adequate" or "inadequate" to preclude federal court review. These phrases form a haphazard patchwork that has drawn considerable public criticism.

A coherent formulation of law which takes into account the underlying policies, the Constitution, and is consistent with most current precedents, is needed. A palpable rule, which petitioner believes would resolve his case, is one along the lines proposed by Professor Wright, et al. That is:

> A '*pro se*' should have notice that a rule exists and applies to his situation and ought to have a reasonable opportunity to present all federal claims. See 16B C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure Section 4027, pp. 386- 387, 392 (2d ed. 1996).

This formulation would give states latitude to form and enforce their own consistent procedural rules for the presentation of claims, state and federal. It would also enable the federal courts to step in when state rules are manipulated to evade federal law, to discriminate against federal rights, or to facilitate invidious discrimination against disfavored Individuals. Petitioner's questioning jurisdiction makes him a Contemnor of COURTS de-facto.

Federal principles allow - because of cause and prejudice - this Court to consider whether Justice was served by JUDICIAL DEPARTMENT in Oregon. Since THIS STATE's 'COURTS' considered the merits of the federal claim, the U. S. supreme Court has a duty to grant the relief that federal law requires. According to, Yates. 484 U.S. 211.

> Fair trials are too important a part of Our free society to let ACTIVISTS pretending to be judges enact 'CONSTITUTIONAL' changes THEY prefer.

One of the indictments of the Declaration of Independence against King George III was that he had "subject[ed] us to a Jurisdiction foreign to our Constitution, and unacknowledged by our Laws" in approving statute law "[f]or depriving us, in many Cases, of Benefits of Trial by Jury" (in bias-COURTS).

There are cases indicating that no denial of Federal rights occurs, by unconstitutional ACT, if the highest 'STATE-COURT' de-facto holds ITSELF to be de jure. Some Federal cases hold unconstitutional ACT creating 'COURT' de-facto makes person assuming to act a 'judge' de-facto. Other cases hold no government can lawfully subject individuals to unrestrained arbitrary exercises of government powers. *{Marbury}* To what purpose are powers limited, and to what purpose are American Constitutions (in writing) if these limits may, at any time, be passed by those intended to be restrained. Which case is right - Law? **App 20.**

The provision is not that no State shall pass an ACT impairing the obligation of contracts (unless by subsequent implied verification the people can be assumed to have acted), for that power is absolutely inhibited to any state. An ACT in conflict with the supreme Law of the Land is a nullity (void). And is it not equally clear that provisions contained in a State Constitution which subject the State obligations to an unconstitutional control can not be obligatory? Hence, Petitioner as Contemnor claimed that ACTS used to deny him a Court of Law impair the obligations of contracts. This claim, as such, is an appeal to the United States Constitution.

This Court held recusal mandatory: *In re Murchison*, 349 U.S. 133; *Mayberry* v. *Pennsylvania*, 400 U.S. 455; *Taylor* v. *Hayes*, 418 U.S. 488. Recognizing that Due Process bars a 'judge' from "awarding costs" when the contemnor and 'JUDGE' become "embroiled in a running controversy."

The first law a judge must apply is the Constitution as defined by those who agreed to it. Judge, therefore, must declare in support of the Law; otherwise, COURT becomes de-facto; 'JUDGE' a usurper. "Care is needed to avoid arbitrary or oppressive conclusions" (*Cooke* v. *United States*, 267 U.S. 517, 539). See, *Crawford v. United States*, 212 U.S. 183, 196; ("Bias . . . might exist in the mind of one . . . who was quite positive that he had no bias"). American cases or controversies jurisprudence is based on laws, irrespective of the character of litigants, or the personal predelictions of judges.

**Causes to be decided**:

(1) Is CIRCUIT dismissal predicated on bias, or was dismissal otherwise in violation of Federal Due Process of Law; in that dismissal was an excessive award to defendant SAFEWAY Inc., *i.e.*, defendant beyond suit?

(2) If bias had not existed in APPEALS COURT de-facto against petitioner, is there some logical argument for APPEALS COURT's ACTS in violation of the State of Oregon and the United States Constitutions?

(3) Can lawful or de-facto officers enact constitutional changes that result in affirming the creation of their COURT without violating Due Process of Law?

## STATEMENT OF THE CASE

This case involves the adequacy of notice, for due process purposes, when Defendant's Counsels makes fraudulent ex-parte statements to obtain dismissal of lawsuit obstructing Plaintiff's right to a jury trial. Therein, the right to notice and a meaningful opportunity to be heard. Petitioner's Natural and Constitutional Rights are violated by application of procedures in Oregon that are above the Law of the Land.

A state rule that is novel or applied inconsistently is inadequate to preclude consideration of a federal claim. See, *e.g.*, Barr v. City of Columbia, 378 U.S. 146, 149 (1964); NAACP v. Alabama ex rel. Patterson, 357 U.S. 449, 457-58 (1958). "Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights." Ford v. Georgia, 498 U.S. 411, 423 (1991). Indeed, even where a state procedural rule is "sensible" in the abstract, Ford, at 422, it cannot bar consideration of a federal claim if it is not applied "evenhandedly to all similar claims." Hathorn 457 U.S. 255, 263 (1982).

HITZ, 766 P.2d 373, 376 (1988 OR): ("Efficient procedures are instruments for, not obstacles to, deciding the merits."). "[W]here the broad legal issue has been adequately identified to the trial court, the issue will be preserved for purposes of appeal." STATE V. MACK, 183 P.3d 191, 194 (2008 OR APP).

Said, is true even if counsel has not identified "the source for his position," STATE V. DOERN, 967 P.2d 1230, 1233 (1998 OR APP), or "ma[de] an argument in support of [it]." STATE V. MARTIN, 897 p.2d 1187, 1189 (1995 OR APP). Discussion between the court and counsel is deemed sufficient to "find that the issue was brought to the trial court's attention." HARRIS, 599 p.2d 456, 458 (1979 OR).

SAFEWAY's Counsel fraudulently argued ex-parte, see "TRANSCRIPT OF PROCEEDINGS ON APPEAL" (T/S), that petitioner obstructed process:

T/S P. 4. "He put forth a series of stipulations including that after every single answer he gave, we then had to stop and give him a written interpretation of what our interpretation of his answer meant. And he proceeded to say that if the judge ruled against him . . . and kept him from those stipulations that he would refuse to participate in the deposition."

SAFEWAY Counsel's fraud upon CIRCUIT biased processing in-favor of dismissal. Petitioner's failure to file his second amended complaint within 10-days, was not the controlling function of dismissal. CIRCUIT waived ORCP 15 B(2) by not complaining when first amended complaint was not filed within 10-days; had CIRCUIT believed 10-day limitation applied 'IT' would have so-stated when it directed petitioner to remove one-line-of-text from first amended complaint.

SAFEWAY Counsel's ex-parte fraud, declared on appeal when -"TRANSCRIPT OF PROCEEDINGS ON APPEAL" was introduced, after petitioner's opening brief filed.

CIRCUIT dismissal was affirmed without comment; appeals 'COURT' Counsel advised petitioner to "look at what defendant asked for." SAFEWAY requested: "The trial court's judgment should be affirmed because plaintiff has not preserved his claim of error." Even if no claim of error was preserved, a contention denied by Petitioner, the bias infection of Counsel's ex parte fraud was not discoverable until after appeal was taken; therefore, "plainly untenable."

Appeals 'COURT' de-facto demonstrated 'ITS' bias against petitioner in a number of ways but few rise to the level of denying a party a jury trial because he failed to raise an issue prior to appeal, that could not be raised until discovered on appeal. If 'THEIR' illogic is carried to the extreme, in THEIR DEPARTMENT de-facto, a party must complain about a possible appearance of bias prior to any knowledge.

This Court's review in Liljeberg, 486 U.S. 837, counters said illogic. In Oregon a party may challenge jurisdiction at any time. The "fundamental requirement of due process" is "'the opportunity to be heard' at a meaningful time and in a meaningful manner." *LaChance v. Erickson*, 522 U.S. 262, 266.

In Lee v. Kemna, 534 U.S. 362, 376 (2002), this Court noted "exceptional cases in which exorbitant application of a generally sound rule renders the state grounds inadequate to stop consideration of a federal question." The Court identified three considerations that led it to conclude that Lee's case fit that mold. Each of those three factors applies with at least equal

force to denial of petitioner Hart's Due Process Rights and/or protection.

*First*, "when the trial judge denied Lee's motion -- judge stated a reason that could not have been countered." *Id.* at 381. To Hart's CIRCUIT statements: "[E]ven the paperwork that they filed requesting this dismissal tends to indicate that dismissal of the case would not really be within the limitations that allow for a right to a remedy under these circumstances. In-other-words, a denial of such - of all remedies."T/S P. 11. CIRCUIT responded, T/S P. 13.

> "I don't think I have any choice under the circumstances. Defendant's motion to dismiss complaint will be allowed."

See, Osborne v. Ohio, 495 U.S. 103 (1990), "[W]e may reach Osborne's due process claim . . .. The trial judge, in no uncertain terms, rejected counsel's argument that the statute was overbroad."

*Second*, the Court noted in *Lee* that "no published . . . decision directs flawless compliance" with the state rules cited. *Id.* at 382.

Again, the same is true here. SAFEWAY moved for dismissal under ORCP 15B(2) claiming "Plaintiff simply has not amended his pleading within the time [10-days] required under the rules." However, ORCP 15B(2) "is procedural, not substantive [essential], and intended to apply to disciplinary matters only." Citing: IN RE CONDUT OF COLIER, 295 OR 320, (1983). See BURKHOLDER V STATE I.A.C. 242 OR 276; ("a trial COURT may, in its discretion, allow a reply to be made after

the time limited by the procedural statutes.") Which is why SAFEWAY switched on appeal to seek dismissal under ORCP 54B.

*Third*, the Court explained in *Lee (Id.* at 385) the defendant "substantially complied" with the state rule by asking for a continuance. Even a rule of "undoubted legitimacy" ceases to be a bar where it is "substantially met" by invocation of a federal right.

Here, THIS STATE's *'RULE'* was substantially met by (See T/S P. 12.):

> "I would prefer to continue with an amendment to the complaint, and try to comply with the (**indiscernible**) that are set forth under amending that complaint, that have already been set forth."

The unanswered question raised by said "indiscernible" is why did CIRCUIT hold that dismissal was mandatory ("I don't think I have any choice under the circumstances") when the U.S. Constitution and the State remedy clause - State of Oregon Constitution, Article I, BILL OF RIGHTS, § 10, counters dismissal: "As to those rights, the remedy clause provides, in mandatory terms, that remedy by due course of law shall be available to every person in the event of injury." SMOTHERS; 332 OR 83 (2001). Douglas, 380 @ 422: "An objection which is ample and timely to bring the alleged federal error to the attention of the trial court and enable it to take appropriate corrective action is sufficient to serve legitimate state interests, and therefore sufficient to preserve the claim for review here."

*Lee's* three considerations are applicable to Hart's *Complaint* about bias appellate review in Oregon:

*First*, the dismissal of Lee's motion, "stated a reason that could not have been countered." When Appeals 'COURT' de-facto demonstrated bias, redress via recusal was filed. *THEIR* response acknowledges bias: "Even if CAREY does not dispose fully of appellant's argument regarding the lawfulness of the existence of this COURT." 'COURT' de-facto's JUDGES argued that their bias is allowed: "COURT rejects appellant's [contemnor's] arguments that his challenge means that the judges [usurpers] of said COURT [de-facto] have such a personal interest [bias] in the challenge that they are disqualified from deciding the appeal" by Federal Law. **[App 6; 7.]**

See; Owen v. Independence, 100 S.C.T. 1398, 445 US 622: Officers of the court have no immunity, when violating a Constitutional right, from liability. For they are deemed to know the law; and:

Scheuer v. Rhodes, 416 U.S. 232 (1974) Expounds upon Owen: "A bill of attainder . . . 'ACT which inflects punishment without judicial [lawful] trial'"

*Second*, in *Lee* - no published state decision directs flawless compliance with rules. Even if, STATE V PALMER, 35 OR APP 125 ("defendant appearing pro se must inform himself of and comply with court rules") is extended to civil plaintiffs, this application violates federal due process. See, NAACP, 371 U.S. 415; Gibbs, 383 U.S. 715; and Johnson v. Avery, 89 S. Ct. 747 (1969) - Maty, 303 U.S. 197 (1938):

"Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies. They should not raise barriers which prevent the achievement of that end. . . a just judgment."

*Third*, *Lee* "substantially complied" with the state rule by challenging the ruling in clear terms. See: Christianson v. Colt., 486 U.S. 800, 818 and Melo v. U.S. 505 F 2d 1026: "Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lacks jurisdiction, the court has no authority to reach merits."

See Osborne v. Ohio, 495 U.S. 103, 125 (1990) (an objection which is ample and timely to bring the alleged federal error to the attention of the lower court and enable it to take appropriate corrective action is sufficient to serve legitimate state interests). Herein, appeals 'COURT' application of a stricter rule serves no legitimate state interest and is therefore inadequate as a matter of federal law. "[A] federal constitutional error can[not] be held harmless [unless] the court [is] able to declare a belief that it was harmless beyond a reasonable doubt." Chapman v. California, 386 U.S. 18, 24 (1967). O'Neal, 513 U.S. 432 applies the *Chapman* standard, "civil and criminal harmless error standards do not differ in their treatment of grave doubt as to the harmlessness of errors affecting substantial rights."

The State of Oregon Constitution also precludes LAW impairing obligations of contracts. Article I, BILL OF RIGHTS, Section 20; Section 21; Section 22, limits suspension of laws to "Authority of the Legislative

Assembly;" Section 17, guarantees jury will decide facts relating to injury and standing of parties; Section 10, § 1, is a prohibition guaranteeing de-jure Constitutional Courts. Article IV, § 20: ***CAREY***, 342 OR 530; - ENACTMENT via IMPLIED VERIFICATION - "shall be void" - not in title of sub-ACT 'amendment' of VOID.

**Oregon; ARTICLE I - BILL OF RIGHTS, Section 17. Jury trial in civil cases.**
In all civil cases the right of Trial by Jury shall remain inviolate. Federal Law guarantees jury trial.

**PRINCIPAL APPLICATION OF RULE OR LAW**
[HELLER, 554 U.S. ___ (2008)]:
The very enumeration of rights in Constitutions takes out of the hands of government **including judiciary** the power to decide on a case-by-case basis whether the right is **really worth** insisting upon. Constitutional rights are enshrined with the scope they were understood to have when the People announced them. Therefore, it is not up to future legislatures (temporary voting majorities) or future judges to decide that the Law is too broad or limiting.

**REMEDY**
The U.S. Supreme Court must fashion Equity when what operates as State 'COURTS' are biased. As remand to THIS STATE has resulted in a disability of the U.S. supreme Court to carry a judgment into effect. U.S. ARTICLE IV, *Section 4, Subsection 2*, dictates action when the Court, expounding on the Constitution, defines domestic Violence. Domestic Violence, mandates Legislature or Executive action.

Hence, remedies in Hart's case should be segmented, assuming the Court defines domestic Violence, as supplanting the State (People) of Oregon.

"The State *AMICI*" in PHILIP MORRIS v. WILLIAMS, No. 07-1216: "notes that, by statute, THIS STATE is entitled to a portion of the punitive damages award" REV. OR. STAT. § 31.731. *I.E.*, JUDICIAL DEPARTMENT's controller (OR. SUPREME COURT) has about one hundred million reasons not to reduce that punitive damage award. Loss of judicial integrity is not limited to Oregon; see, No. 08-22, MASSEY COAL.

## REASONS FOR GRANTING THE WRIT

It is the function of the United States supreme Court, as the interpreter of the Constitution of America, to say what is or is not "domestic Violence" and to protect judicially the Constitution, thus, to restrain the power of government(s) to corrupt.

Where errors of constitutional dimension occur, judgment shall be vacated as void. Fed. Rule 60. Purported judgments rendered by incompetent COURTS de-facto are nullities and absent reversal deprive parties of fundamental property rights and procedural Due Process of Law. In order to render a judgment, a court must be vested with some portion of the judicial power limited by the sovereign People; otherwise the proceeding is not a judicial proceeding and cannot yield a judgment that can be carried into effect lawfully. As enabled in this Court's decisions on when recusal is mandatory.

The source of all judicial jurisdiction in Oregon is found in the State Constitution and laws enacted in compliance with the Constitution(s). Unlike the United States Constitution, ARTICLE VII [original] of the Oregon Constitution does not grant power to any branch to create secret (undisclosed) courts. **App 21.**

The Oregon Constitution, as approved by the U.S. Congress, prohibits what currently exists as super legislature's shadow GOVERNMENT de-facto that supplants the State of Oregon in the form of 'SUPREME COURT's' JUDICIAL DEPARTMENT. **App 22.**

This Court's holdings (*Reid - Ryder*) recognize that legislative and judicial encroachments on the jurisdiction of civil (common law) and military courts as to deprive a party of the right to jury trial or otherwise impose possible bias of our treasured constitutional protections (contained in U.S. Article III, and the First, Fifth, and Sixth Amendments), "which were designed to protect persons from oppressive governmental practices" are unconstitutional. *Id.*, 354 US 1 at 21-22 and 515 US 177. **App 19.**

Therefore, ACTS of shadow GOVERNMENT de-facto are repressible in this Court because a void judgment occurs where there is a plain usurpation of power. See *United States v. Tuttjung*, 235 F3d 330, 335 (7th Cir 2000), *cert den* 533 US 931, 121 S Ct 2554, 150 L Ed 2d 721 (2001) (Judgment is void if court entered a decree "not within the powers granted to it by the Law"); *Nemaizer v. Baker*, 793 F2d 58, 65 (2nd Cir 1986) ("no arguable basis" for jurisdiction exists).

Petitioner has cited Constitutional violations (1st, 5th, 7th, and 14th Amendments, and A. IV *§ 4*, the U. S. Constitution). This then is a writ of error to what pretends to be the Supreme Court of Oregon, 'IT' being highest tribunal supplanting the State of Oregon (ORS 1.002); for denying review of APPEALS 'COURT's' claim to jurisdiction - based on CAREY 342 OR 530.

Thus, the question is the validity of usurpation of the State of Oregon Constitution. That-is-to-say, creation in CAREY 203 OR APP 399 and CAREY 342 OR 530 (2007) of a new means by which shadow GOVERNMENT de-facto can 'AMEND' the State and Federal Constitutions. **App 30.**

Said ACTS being repugnant to the United States Constitution, and the resulting denial of Due Process being against the title, rights, privileges, or exemptions specially set up and claimed by Hart; this Court should proceed under Article III, Original Jurisdiction (State ex rel) and inform the Legislature or Executive, as the taint from Oregon is infecting the spinal column of American democracy. [1]

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[1] **The Federalist No. 83**, p. 426 (M. Beloff ed. 1987). Alexander Hamilton wrote that "[t]he friends and adversaries of the plan of the convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury: Or if there is any difference between them, it consists in this, the former regard it as a valuable safeguard to liberty, the latter represent it as the very palladium of free government."

This concern to the exercise of appellate jurisdiction exists as Petitioner is a Citizen of the United States, residing in Oregon, and Respondent THIS STATE'S SUPREME 'COURT' de-facto supplanting Oregon, is GOVERNMENT de-facto. Which in case number 07-1216 (*Philip Morris v. Williams*), has refused to follow this Court's remand.

Ergo, this Court's lack of ability to compel appears to require application of Original Jurisdiction or Mandamus to the U. S. Legislature or Executive, should this Court find the ACTS in Oregon to be "domestic Violence."

## CONCLUSION

When the 13-Colonies asserted the Laws of Nature (being defined by developing common law) as superior to the King's Law, by ARTICLES OF CONFEDERATION they created a GOVERNMENT de-facto. This usurpation, believed to be a better form by the Colonist, was acknowledged by the King of England in exchange for all mineral rights in America. Ergo, GOVERNMENT de-facto became de jure.

However, said Articles of Confederation did not restrain human nature, so persons in public offices abused power for their own (KINGLY) benefit. The Founders resolved most forms of abuses of the People when the United States Constitution of America replaced the Confederation, thus guaranteeing a separation of powers of Government and providing checks on abuses of trust by public officers.

However, if State Constitutions can be changed as alleged in CAREY 203 OR APP 399 and 342 OR 530, what then prevents a temporary majority from a hostile nation (or corporation) from usurping a State and supplanting the State Constitution?

And, if they are successful, what is to prevent said hostile majority from continuing the process in another State? Eventually, if this process is allowed to continue, the Federal Courts will be compromised by members hostile to the interests of the People of the United States of America; invoking involuntary servitude, such as now prevails in Oregon. **App 18.**

ARTICLE IV, charging "the United States shall" does not exempt the Judicial Branch from explaining what is or is not "domestic Violence." This Case provides an opportunity to enlighten the World on why the Founders believed the United States of America's experiment of restraint on human nature can and should continue (to prevent violence). **App 34.**

## SHOCKINGLY EXCESSIVE

The decision whether a judge's impartiality can "reasonably be questioned" is to be made in light of the facts as they existed, and not as they were surmised or reported. See, Microsoft, 503 U.S. 1301.

Petitioner filed Complaint against SAFEWAY Inc., for injuries (his bodily injury occurred on or about Aug. 25, 2003), resulting from SAFEWAY's operation of a grocery store in Oregon.

Bodily injury came about from either negligence or deliberate disregard for safety of shoppers. Bodily injury is supported by statements of Witnesses.

SAFEWAY Inc., has not denied negligence. SAFEWAY's doctor confirmed painful injury to Hart's sacroiliac joint that "will require periodic treatments for the rest of your life."

SAFEWAY Inc., moved for amendments to Hart's Complaint. The first amended Complaint was filed about 45-days after grant of SAFEWAY's motion.

SAFEWAY Inc., moved, in response, to strike the amended complaint. CIRCUIT ordered Hart to exclude:

> "manipulates employees and lawsuits to minimize payments on claims instead of preventing accidents through better training and supervision"

and to plead contract violations with more certainty.

Petitioner sought an extension of time when his father was injured (then died). SAFEWAY Inc., moved for dismissal or extension of time to prepare for trial; arguing Hart has not filed a second amended complaint as required under {a 10-day filing option} ORCP 15 B(2). SAFEWAY's Counsel did not mail said motion to Hart in a timely manner.

CIRCUIT stated (during oral arguments on SAFEWAY's motion to dismiss):

> T/S - P.13. "I don't think I have any choice under the circumstances . . . motion to dismiss the complaint will be allowed."

[TRANSCRIPT OF PROCEEDINGS ON APPEAL (T/S) is incomplete/inaccurate. **[App 5]**

Before SAFEWAY's dismissal with prejudice, without costs, filed, Hart moved for reconsideration; citing violation of federal due process and filed second amended Complaint. **[App 2.]**

Pro tem CIRCUIT JUDGE Redman derives most of his income by representing Corporations. Ergo, awarding SAFEWAY INC., immunity to suit, should be viewed with suspicion, as Redman appears biased.

On 'APPEAL' due process violations were raised in opening brief. After opening brief filed SAFEWAY's Counsel moved to supplement with TRANSCRIPT OF PROCEEDINGS ON APPEAL. T/S - P. 4., establishes that Counsel, for SAFEWAY Inc., ex-parte, perpetrated a fraud upon CIRCUIT 'COURT' to bias 'IT' in favor of dismissal. Counsel had previously focused JUDICIAL DEPARTMENT's attention on Hart's efforts to return Oregon to a State in good standing under the United States Constitution.

DO THIS STATE's - DEPARTMENT OF JUSTICE – ACTIVISTS' ACTS, bias, violate Law?

Petitioner, when injured by SAFEWAY Inc., sought remedy via THIS STATE's CIRCUIT 'COURT' - proceeding under the directives of - Texas v. White, 74 U.S. 700 (1868). However, the problem with assuming that some extrajudicial FIAT, of GOVERNMENT de-facto, can be held de jure when reviewed by Lawful

authority, presupposes that GOVERNMENT de-facto action will be transparent in regard to when the interest of said GOVERNMENT de-facto will be served by said FIAT. The lack of confidence, then, is in how to prevent obstructions of Justice that render jurisdiction moot. One option could be salutary contracts, as used by Governor (President) Jefferson. Another lies in our faith in the absolute integrity of judicial process to protect an Individual's life - property rights.

**WHEREFOR** Petitioner MOVES:

1. For redress in the form of an order directing defendant SAFEWAY Inc., to pay double the damages requested in second Amended Compliant.

2. For legal expenses and interest dating from said injuries.

3. For release from custody of shadow GOVERNMENT de-facto in Oregon; reversal of so-called cost award to SAFEWAY, issued for Hart's Contempt of 'COURTS' usurping Oregon.

4. For what other relief the United States supreme Court deems Just and Equitable.

5. For Application to the Legislature, or of the Executive, if the Court determines "domestic Violence" is occurring in Oregon.

Charged, May 8, 2009, By - /S/ _____
Curtis Hart

APPENDIX A [not attached] please designate certiorari case number 06-790 (*LINCOLN LOAN CO. V. THE CITY OF PORTLAND, OR*) that documents usurpation **-the fact that no State of Oregon Courts are available** as App. A and make it a part herein.

IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR THE COUNTY OF CLACKAMAS

| | | |
|---|---|---|
| Curtis Hart, | \| | Case No. CV 05 080502 |
| Plaintiff, | \| | ORDER GRANTING |
| v | \| | DEFENDANT |
| SAFEWAY, INC., | \| | SAFEWAY, INC.'S |
| Defendant. | \| | MOTION TO DISMISS |

THIS MATTER came before the court on July 10, 2006, before the Honorable James Redmond[SIC*], on defendant Safeway, Inc.'s Motion to Dismiss or in the Alternative Postpone Trial Date. Plaintiff appeared pro se and Defendant appeared through its attorney, Barry M. Mount and Jennifer A. Durham.[2] The court having heard arguments, read the memoranda submitted by the parties, and being fully advised in the premises, now therefore,

**IT IS HEREBY ORDERED** that Safeway's Motion to Dismiss is granted and this case is dismissed, and Safeway's alternative Motion to Postpone is moot.

aug

DATED this 3 of ~~July~~ 2006

_?T W~~t ?____ Circuit Court Judge

**[*Mr. Redman set on the case not "Redmond"]**

SUBMITTED BY: Barry M. Mount, OSB No. 69127 of Attorneys for Defendant Safeway, Inc.

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[2] Not to be confused with so-called Justice DURHAM.

IN THE CIRCUIT COURT
OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

| | |
|---|---|
| Curtis Hart, Plaintiff, | Case No. CV 05 080502 |
| v | |
| SAFEWAY, INC., | GENERAL JUDGMENT |
| Defendant. | OF DISMISSAL |

Based upon the **ORDER GRANTING DEFENDANT SAFEWAY, INC.'S MOTION TO DISMISS** in the above-entitled matter,

IT IS HEREBY ORDERED AND ADJUDGED that this case is dismissed with prejudice and without costs to any party.

aug
DATED this 3 ~~July~~, 2006.

_?T K~l ?___
Circuit Court Judge

SUBMITTED BY:
Barry M. Mount, OSB No. 69127
of Attorneys for Defendant Safeway, Inc.

IN THE CIRCUIT COURT
OF THE STATE OF OREGON
FOR THE COUNTY OF CLACKAMAS

| | | |
|---|---|---|
| Curtis Hart, Plaintiff, | \| | Case No. CV 05 080502 |
| v | \| | ORDER ON |
| SAFEWAY, INC., | \| | PLAINTIFF'S MOTION |
| Defendant. | \| | ON JURISDICTION |

THIS MATTER came before the court on June 11, 2007, before the Honorable James E. Redman, on plaintiff's "Motion on Jurisdiction via Show Cause and transcript Dispute." Plaintiff appeared pro se and defendant appeared through its attorneys. Pamela J. Stendahi and Jennifer A. Durham. The court having heard arguments, read the memoranda submitted by the parties, and being fully advised in the premises, now therefore, finds that this court lacks jurisdiction because this action is pending in the court of appeals, and based upon ORS 19.270, and there fore,

**IT IS HEREBY ORDERED**
that plaintiff's motion is abated.

DATED this _____ of June, 2007.

_____
JAMES E. REDMAN
Circuit Court Judge

SUBMITTED BY:
Pamela J. Stendahi, OSB No. 894160
Of Attorneys for Defendant Safeway, Inc.

IN THE COURT OF APPEALS
OF THE STATE OF OREGON

Curtis Hart, Plaintiff-Appellant,
v
SAFEWAY, INC., Defendant-Respondent.

Clackamas County Circuit Court No.
CV05080502
Court of Appeals No. A133212

**ORDER DENYING "COMPLAINT FOR DECLARATORY ARBITRATION ON SHOW CAUSE FOR JURISDICTION"**

To the extent that appellant purports to initiate an original declaratory relief action in this court, the complaint is dismissed, because ;the Court of Appeals does not have jurisdiction to entertain a declaratory relief action. In the alternative, appellant requests that this court transfer the case to federal court. Appellant does not identify to which federal court the case should be transferred. In any event, appellant does not identify any legal authority for an intermediate state appellate court to transfer a case to any federal court and the court is not aware of any such authority. Appellant's request for a transfer on the case to federal court is denied.

Appellant's reply brief is due 21 days from the date of this order.

Jul 30 2007 /s/ David V. Brewer
DAVID V. BREWER, CHIEF JUDGE

c: Curtis Hart [&] Pamela J. Stendahi

IN THE COURT OF APPEALS
OF THE STATE OF OREGON

Curtis Hart, Plaintiff-Appellant,
v
SAFEWAY, INC., Defendant-Respondent.
Clackamas County Circuit Court CV05080502

A133212

**ORDER ACKNOWLEDGING INACCURACIES IN ORDER BUT AFFIRMING RULING; ORDER OVERRULING OBJECTIONS**

I

By order dated July 30.2007, the court disposed of appellant's "Motion to Determine Jurisdiction and Show Cause, Why Transcript and Bias Should be Allowed". Appellant has filed a paper entitled "Please Show Cause for Obstructing Process" in which he points out that the order incorrectly suggests that he designated a transcript of oral proceedings in the trial court as part of the record on appeal. Appellant is correct that he did not designate any transcript, but, rather, respondent moved to supplement the record with a transcript of a particular hearing. However, that does not change the court's ruling that, if appellant contends that the transcript inaccurately depicts the oral proceedings of the hearing, his remedy was to file timely a motion to correct the transcript. Appellant argues that he timely filed a motion that challenged the accuracy of the transcript. If so, it appears that, by order entered on June 25, 2007, the court - disposed of that motion.

Appellant also disputes that *Carey v. Lincoln Loan Co., 342 Or 530* (2006), disposes of his challenge to the lawfulness of this court, or at least the lawfulness of this court making rulings in this case. If the court understands appellant's argument, he contends that (1) this court does not lawfully exist; (2) appellant is challenging the lawfulness of the existence of this court; (3) the judges of this court have a personal interest in the outcome of the appeal; and (4) therefore, the judges are disqualified from making rulings in the case. Because *Carey* disposes of the first premise of appellant's argument, his argument fails. Even if *Carey* does not dispose fully of appellant's argument regarding the lawfulness of the existence of this court, the court rejects appellant's argument that his challenge means that the judges of the court have such a personal interest in the challenge that they are disqualified from deciding the appeal.

To the extent that appellant intended his filing to be a motion for reconsideration of the July 30, 2007, order, except as to corrections noted in this order, the July 30, 2007, order is reaffirmed.

II.

Appellant also has filed a four-page document partially entitled "Objection to Filing Brief in De-Facto 'Court of Appeals'" in which he requests that all judges of this court remove themselves from the case, reiterating his argument that (1) this court does not lawfully exist; (2) appellant is challenging the lawfulness of the existence of this court; (3) the judges

of this court have a personal interest in the outcome of this appeal; and (4) therefore, the judges are disqualified from making rulings in the case. The motion is denied on the same grounds as indicated in Part I of this order.

III.

Appellant further has filed a one-page document also partially entitled "Objection to Filing Reply Brief in De-Facto 'Court of Appeals'" in which, on the same grounds, appellant objects to the court establishing a period of 21 days in which appellant should file his reply brief. The objection is overruled.

III.

Appellant's reply brief is due 21 days from the date of this order. Appellant's failure to file a reply brief within that time will result in the appeal being submitted to the court for decision without a reply brief. No motion filed by appellant will toll the due date of appellant's reply brief.

Jan 11 2008 /s/ DVB
DAVID V. BREWER,
CHIEF JUDGE

c: Curtis Hart
Pamela J. Stendahi

IN THE SUPREME COURT
OF THE STATE OF OREGON

Curtis Hart, Plaintiff-Relator,

v

SAFEWAY, INC., Defendant-Adverse Party.

Clackamas County Circuit Court
CV05080502

S055695

**ORDER DENYING PETITION FOR RECONSIDERATION**

Upon consideration by the court.

The court construes relator's "response to adverse party's memorandum in opposition to petition for alternative writ of mandamus" as a petition for reconsideration, and orders that it be denied.

April 16, 2008 /s/ _____
CHIEF JUSTICE

c: Pamela J Stendahi
Curtis Hart

IN THE SUPREME COURT
OF THE STATE OF OREGON

Curtis Hart, Plaintiff-Appellant,
Petitioner on Review,
v
SAFEWAY, INC., Defendant-Respondent,
Respondent on Review.

Court of Appeals
A133212

S055695

**ORDER DENYING PETITION FOR RECONSIDERATION**

Upon consideration by the court.

The court has considered the petition for reconsideration and orders that it be denied.

December 10, 2008 /s/ P~~~ Bn~~y
CHIEF JUSTICE

c: Pamela J Stendahi
Curtis Hart

IN THE SUPREME COURT
OF THE STATE OF OREGON

Curtis Hart, Plaintiff-Appellant,
Petitioner on Review,
v
SAFEWAY, INC., Defendant-Respondent,
Respondent on Review.

Court of Appeals
A133212

S055695

**ORDER DENYING REVIEW**

Upon consideration by the court.

The court has considered the petition for review and orders that it be denied.

October 3, 2008 /s/ R~i~ Ki~te~n
PRESIDING JUSTICE

c: Pamela J Stendahi
Curtis Hart

IN THE COURT OF APPEALS
OF THE STATE OF OREGON

Curtis Hart, Plaintiff-Appellant,
v
SAFEWAY, INC., Defendant-Respondent.

Clackamas County Circuit Court CV05080502

A133212

**ORDER DENYING MOTION TO HOLD IN ABEYANCE AND ORDER AWARDING COSTS AND DISBURSEMENTS**

Respondent, who prevailed on appeal, has filed a cost bill in the amount of $721.28. Appellant has filed objections, and has moved for the court to hold respondent's cost bill in abeyance pending resolution of a petition for review in the Supreme Court. The motion is denied.

Appellant's objections are overruled, and respondent is awarded costs in the amount requested, $721.28.

AUG 25 2008 /s/ Ri~~ H~~~~
RICK HASELTON, PRESIDING JUDGE

c: Curtis Hart
Pamela J. Stendahi

IN THE SUPREME COURT
OF THE STATE OF OREGON

Curtis Hart, Plaintiff-Appellant,
Petitioner on Review,
v
SAFEWAY, INC., Defendant-Respondent,
Respondent on Review.

Court of Appeals
A133212

S055695

**ORDER DENYING MOTION FOR DECLARATION OF RIGHTS AND DEMAND FOR RECUSAL**

Upon consideration by the court.

Petitioner on review's "motion for declaration of rights, and demand for recusal" is denied.

April 8, 2009

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Gillete
PRESIDING
JUSTICE

c: Pamela J Stendahi
Curtis ~ Hart

**The United States Constitution of America:**

**ARTICLE I:**

§ 10. **No State shall enter into** any Treaty, Alliance, or **Confederation**; grant Letters of Marque or Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; **pass any Bill of Attainder, ex post facto Law**, or **Law impairing the Obligation of Contracts**, or grant any Title of Nobility.

No State, without the Consent of Congress . . ., enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

**ARTICLE IV:**

*§ 2.* The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

*§ 4.* The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

**ARTICLE VI:**

¶ 2. This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

**Amendment:**

I. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

IV. The right of the people to be secure in their persons, houses papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

V. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation.

VII. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the

United States, than according to the rules of the common law.

XIII. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the U. S., or any place subject to their jurisdiction.

XIV. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

Fed . Rule Civ. P. 60(b)

## RELIEF FROM A JUDGMENT OR ORDER

**(B) Grounds for Relief from a Final Judgment, Order or Proceeding.** On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistake, inadvertence, surprise, or excusable neglect;

(2) newly discovered evidence that , with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;

(4) the judgment is void;

(5) the judgment has been satisfied; released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or

(6) any other reason that justifies relief.

## SUPPLANTS (USURPATIONS) OF THE STATE OF OREGON COURTS ANNOTATED - 2009

The State of Oregon Supreme Court, as proffered by the People of Oregon, and approved by the United States Legislature, was usurped (supplanted) via 1878-ACT. CLINE V. GREENWOOD, 10 OR 230 (1882): Although invested with the same supreme judicial power, it is not the same supreme court which existed prior to implementation of the 1878-ACT.

Under the ACT of 1878, providing for election of supreme and circuit judges in distinct classes, the election was postponed until the next general election. By virtue of an emergency clause, 1878-ACT took effect from and after its approval by the governor. In the meantime, OFFICES **created by** 1878-ACT were filled by appointment by the governor.

1878-ACT violated the State of Oregon and United States Constitutions.
IN re AH LEE, 5 F. 899 (1880):
Held, 1878-ACT was unconstitutional, because the population of Oregon was less than 200,000, and that the appointments by the governor were therefore invalid, and also because the constitution only authorized the selection of such judges by election, still the persons so appointed under 1878-ACT and performing the duties of the judges of said COURTS were judges de facto. . . person thus appointed should take upon himself the duties of that OFFICE, he would be a judge of the **supreme** COURT **de-facto**.

BURT v. WINONA, 31 Minn. 472, 18 N.W. 285: But I am unable to concur in the views expressed in the majority opinion, that even if the ACT creating the COURT was never constitutionally passed, still it would be a de facto COURT. The logical result of this would be that the person assuming to act as JUDGE of that COURT would be an officer de facto, and the judgments of the COURT as valid as those of a legal court.

There are many cases to the effect that a person holding an office under an unconstitutional LAW is an officer de facto, but I think that in every one it will be found that there was a legal office, and that the law only went to the mode or manner of filling it.

As suggested in the opinion, the de facto doctrine is founded on reasons of public policy and necessity, but it must have some reasonable limits, **unless we are ready to recognize practical revolution and legislative right to ignore all constitutional barriers.** [18 N.W. 285]

Norton v. Shelby County, 118 U.S. 425 (1886); Ruling Case Law, Mckinney (1917) P.518:

**If the Constitution controls there never can be** COURTS **de-facto.**

STATE EX REL MCINTIER AND HULL V. BALMER, 336 OR 1 (2003):

By the ACT - "the 1878 Legislative Assembly adopted a general LAW that completely reorganized the judicial branch . . . created two 'distinct classes' of COURTS, (1) a Supreme COURT; and (2) a separate trial division of the judiciary consisting of 'circuit judges'. Hence, to

the present day, JUDGES of this [ARTICLE SEVEN (AMENDED)] SUPREME 'COURT' [supplanting the State] of Oregon have been part of a 'distinct class' that the [SUPER] legislature [GOVERNMENT de-facto] chose to have the people elect from the state as a whole."

Ryder v. United States, 515 U.S. 177 (1995):

The de facto officer doctrine which confers validity upon acts performed under the color of official title even though it is later discovered that the legality of the actor's appointment or election to [a valid] office is deficient cannot be invoked to authorize the actions of the judges in question. Held:

> The Court of Military Appeals erred in according de facto validity to the actions of the civilian judges petitioner challenged the composition of that COURT as violative of the Appointments Clause of the Constitution.

HOLMAN ET AL. V. LUTZ ET, 132 OR 185 (1930):

The persons appointed as JUDGES under this 1878-ACT, although its unconstitutionality be admitted, and that therefore they are not judges de jure or of right, are nevertheless, acting as judges of constitutionally created and existing courts. . . or acquiescence by the public in the ACTS of such OFFICER for such a length of time as to raise the presumption of colorable [bad] right by election or appointment.

MCINTIER V FORBS, 322 OR 426, 436; EKWALL V STADELMAN, 146 OR 449, 450:

"The very enumeration of limitations on office in the State of Oregon Constitution excludes the idea that, in

the adoption of the constitution, the People intended that there should be any other qualifications. As was said by Madison in the convention which framed the Constitution:"

> "The qualifications of electors and elected are fundamental articles in a republican government, and ought to be fixed by the Constitution. If the legislature could regulate those of either, it can by degrees subvert the Constitution."

Marbury v. Madison, 1 Cranch 137, 177 (1803): "To what purpose are powers limited, and to what purpose is that limitation committed to writing if these limits may, at any time, be passed by those intended to be restrained? The distinction between a Government with limited and unlimited powers is abolished if those limits do not confine the persons on whom they are imposed and if acts prohibited and acts allowed are of equal obligation."

Cohens v. Virginia, 19 U.S. (6 Wheat.) 264 (1821): "The Constitution and laws of a State, so far as they are repugnant to the Constitution and laws of the United States, are absolutely void."

The State of Oregon Constitution precludes so-called COURTS de-facto.

**Article I, [a] BILL OF RIGHTS, Section [(S.)]10. Administration of justice.**

> No court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay, and every man shall have remedy by due course of law for injury

done him in his person, property, or reputation.

**A prohibition**: No court shall be - **Secret**: – unconstitutional, ulterior, undisclosed, unexpressed, unwritten, hidden, obscure, covert, stealthy, concealed.

*Adjective*, **laying behind what is manifest or avowed**.

The Oregon Constitution also prevents extrajudicial COURTS by assigning power.

**Article VII:**

**Section 1. Courts in which judicial power vested.** The Judicial power of the State shall be vested in a Suprume (sic) Court, Circuits Courts, and County Courts, which shall be Courts of Record having general jurisdiction, to be defined, limited, and regulated by law in accordance with this Constitution.—Justices of the Peace may also be invested with limited Judicial powers, and Municipal Courts may be created to administer the regulations of incorporated towns, and cities.—

**Section 2.** The Supreme Court shall consist of Four Justices to be chosen in districts by the electors thereof, who shall be citizens of the United States, and who shall have resided in the State at least three years next preceding their election, and after their election to reside in their respective districts:—The number of Justices, the Districts may be increased, but shall not exceed five until the white population of the State shall amount to One Hundred Thousand, and shall never exceed seven; and the boundaries of districts may be changed, but no Change of Districts, shall have the effect to remove a Judge from office, or require (sic) him to change his residence without his consent.—

**Section 5. Chief Justice.** The Judge who has the shortest term to serve, or the oldest of several having such shortest term, and not holding by appointment shall be the Cheif (sic) Justice.—

**Section 6. Jurisdiction.** The Supreme Court shall have jurisdiction only to revise the final decisions of the Circuit Courts, and every cause shall be tried, and every decision shall be made by those Judges only, or a majority of them, who did not try the cause, or make the decision in the Circuit Court.—

**Section 8. Circuit court.** The Circuits Courts shall be held twice at least in each year in each County organized for judicial purposes, by one of the Justices of the Supreme Court at times to be appointed by law; and at such other times as may be appointed by the Judges severally in pursuance of law.—

**Section 9. Jurisdiction of circuit courts.** All judicial power, authority, and jurisdiction not vested by this Constitution, or by laws consistent therewith, exclusively in some other Court shall belong to the Circuit Courts, and they shall have appellate jurisdiction, and supervisory control over the County Courts, and all other inferior Courts, Officers, and tribunals.—

**Section 10. Supreme and circuit judges; election in classes.** When the white population of the State shall amount to Two Hundred Thousand the Legislative Assembly, may provide for the election of Supreme, and Circuit Judges, in distinct classes, one of which classes shall consist of three Justices of the Supreme Court, who shall not perform Circuit duty, and the other class shall consist of the necessary number of Circuit Judges, who shall hold full terms

without allotment, and who shall take the same oath as the Supreme Judges.—

**Section 21. Oath of office of Supreme Court Judges.** Every judge of the Supreme Court before entering upon the duties of his office shall take, subscribe, and transmit to the Secretary of State the following oath.—I _____ do solemnly swear (or affirm) that I will support the Constitution of the United States, and the constitution of the State of Oregon, and that I will faithfully, and impartially discharge the duties of a Judge of the Supreme, and Circuits Courts of said, State according to the best of my ability, and that I will not accept any other office, except Judicial offices during the term for which I have been elected.— [See SEVEN (AMENDED) '7 OATH to THIS STATE!]

1878-ACT is also unconstitutional in 'ITS' application: Article VII: Section (**S.**) **10**; only authorizes "Legislative Assembly, may provide for the **election** of Supreme, and Circuit Judges, in distinct classes."

To read a limitation - as a grant to create courts - impairs the obligations of the contracts (State and Federal Constitutions); disregards the plain language in **S. 2**: (Supreme Court shall consist of Four Justices but **shall never exceed seven**) which confirms, **S. 2** is not replaced by **S. 10**. Nothing in Oregon's Constitution supports the view that legislatures, or judges, are granted power to create extrajudicial 'COURTS'.

SMOTHERS V. GRESHAM TRANSFER, INC., 332 OR 83 (1999):

***115.** Constitutions are contracts, Oregon's Constitution is generally one of limitation, therefore to be construed according to the beliefs and usage of language applicable when adopted. Every word must be considered to have importance; though, the Constitution is construed as a whole.

***91.** The Oregon Constitution was adopted in 1859. The principle that the law makes available a remedy for injury comes from the common law.

***95.** The common law protected individuals by placing substantive restraints on both the Crown and Parliament. History also had taught the American colonists that . . . their rights were not safe from the arbitrary exercise of government power unless they were embodied in **positive** law. SMOTHERS at *101.

***105.** Constitution writers realized that unrestrained state legislative power was as much a threat to the security of individual rights as unrestrained parliamentary and royal power had been.

***106.** One of the notable features of all state constitutions that were drafted in the mid-nineteenth century was the mistrust of legislative power.

***113.** Like their Indiana counterparts, the drafters of the Oregon Constitution were leery of legislative power.

Expounding on the Oregon Constitution given said drafter's mistrust of Legislative Assembly power; we must read Article VII, Section (S.) 10, as authorizing:

> "Legislative Assembly may provide for the election of Supreme, and Circuit Judges, in distinct classes [units], one of which classes [units] shall consist of three [district elected (S. 2)] Justices of the Supreme Court, who shall not perform Circuit duty, [the other Justices, of the Supreme Court (elected from up to four state inclusive districts) will continue to serve Circuits (S. 8)] and the other [election class [sub-unit] provided] shall consist, of the necessary number of Circuit Judges [as may be set by the Supreme Judges severally in pursuance of law (S. 8)],who shall hold full terms without allotment, and who shall take the same [(S. 21)] oath as the Supreme Judges."

The Oregon Judicial Branch, **A. VII**, formed on the proper respect of government, limited the political abuse of election of Justices to districts. If Legislative Assembly activated Sec. 10, each of the three Justices, who shall not perform Circuit duty, would be elected from, and representative of, one third of Oregon.

The (up to four) Justices (who shall perform Circuits duty) are elected from, in contact with, and representative of one fourth of Oregon *i.e.*, their districts cross-section ($^{3}\#\#_{4}$) Oregon. Said Justices are assisted by as many Circuit Judges as necessary. However, Circuit Courts (via Section 9, primarily: "have appellate jurisdiction, and supervisory control over the County Courts, and all other inferior Courts Officers, and tribunals."

Thus, district-elections limits 'judge's' affect (bias) on judicial promulgations. See, Ex parte Virginia, 100 U.S. 339; The Law of Torts, 1642-1643: "The presence of malice and the intention to deprive a person of his constitutional rights he exercises no discretion or individual judgment; he acts no longer as a judge, but as a 'minister' of his own prejudices."

STATE V. COCHRAN, 55 OR 157 (1909):

Assumes, 1878-ACT "writes into the State Constitution new provisions." Applying the same reasoning COCHRAN argues 'made provision for a JUDICIAL DEPARTMENT' on the supposition that Article VII, Section 10 supplants Section 2. Then recognizing that **S.** 5, continues to regulate ('the judge who has the shortest term to serve, or the oldest of several having such shortest term . . . shall be the Chief Justice'), conflicts – 'so long as there are but three justices, there cannot be two holding terms of equal length.' If, as contended, when the ACT of 1878 brought Section 10 into operation, ***190** 1878-ACT blotted out all trace of Section 2; such annihilation, would also have carried with it Section 5. (And, Sections, 6, 8, 9, & 21; also, eliminates Article XVIII and Article I, BILL OF RIGHTS, Section 10; in-effect revolutionize the State of Oregon Constitution).

Said COCHRAN case premises on fact - 1878-ACT supplanted with supreme 'COURT' de-facto, but left Circuit Courts with supervisory and appellate jurisdiction over said inferior supreme TRIBUNAL. To maintain their government de-facto ACTIVISTS "proposed amendment including a proposed change of

our entire judicial system." The proposals to revolutionize the State Constitution, by "the judiciary committee (always composed of lawyers) in both branches of the Legislature" failed. Said proposals were then packaged as 'ARTICLE SEVEN (AMENDED)' to the 1910-voters; who rejected 'IT'. Fraud was used to make 'IT' appear to have passed; see, CAREY, 203 OR APP 399 - STATE EX REL. LINCOLN LOAN, 336 OR 9 (2003).

STATE EX REL WERNMARK V. HOPKINS, 213 OR " 637:
With adoption of ARTICLE SEVEN (AMENDED), the parts of the original Article VII which bore that numeral and in conflict with it were, of course, repealed. The other parts which did not conflict with the NEW and which were complementary to the LATTER remained in force but **were degraded in rank** to the point where the legislature [(super legislature) *i.e.*, SUPREME COURT de-facto] is authorized to repeal or amend them. FEHI V. JACKSON COUNTY, 117 OR 200, speaks to that effect. It held that after the adoption of ARTICLE SEVEN (AMENDED) so-called JUDGES "were not the incumbents of constitutional offices." [Became 'JUDGES' of JUDICIAL DEPARTMENT.] [PLAIN USURPATION].

STARR V. LAUNDRY, 155 OR 636, 643 (1936):
"In Oregon CIRCUIT COURTS are not supported by any express constitutional provisions, nor does the constitution expressly confer jurisdiction to issue injunction upon any TRIBUNAL. The original Article VII of Oregon has been supplanted in this respect by the present ARTICLE SEVEN" AMENDMENTS, plural, violating the State of Oregon Constitution; see, **Article XVII**.

STATE EX REL. RICCO v. BIGGS, 255 P.2d 1055 (1953): "We may just as well face the facts of judicial life in Oregon. They are not the same as in other states . . . , OUR CIRCUIT COURTS do not exercise all the inherent powers of the common law courts." "Inherent powers of common law courts . . . may be in Oregon the substance of things hoped for, but they have little relation to actualities here. I happen to be one of those who would have it otherwise, but I do not believe that the JUDGES of this [SUPREME] COURT have a commission to remold our judicial system [*i.e.*, 'THEIR' JUDICIAL DEPARTMENT] nearer to the heart's desire."

See, STATE EX REL MADDEN V. CRAWFORD, 207 OR 76: THIS STATE, identify by ORS 131.205, as GOVERNMENT de-facto, supplants the power of the People (State) of Oregon; is only GOVERNMENT created by the constitution, ITSELF.

> In-other-words, an unlawful replacement of the State occurred when ARTICLE SEVEN AMENDMENTS usurped, by fraudulent appearance in the Oregon Constitution. As ARTICLE SEVEN (AMENDED), designated "one supreme court" into which all "judicial power of the state shall be vested."

By import, new so-called 'SUPREME COURT' de-facto supplants all policy-making (Governmental) authority of the State. Holding dominion via JUDICIAL DEPARTMENT (departure-from-what-is-meant) of Government. See, ORS 1.002, ' 1, defining THIS STATE'S "Highest TRIBUNAL of JUDICIAL DEPARTMENT" - thereby, CONTROLLER of all policy in Oregon.

As said in Batchelor v. Cupp, 693 F.2d 859. "The Attorney General asserts that the Oregon Supreme Court [supplanting via ARTICLE SEVEN (AMENDED)] is a policy-making COURT, not an error-correcting court, and that it would be inappropriate to require the Oregon SUPREME COURT to review a petition to uncover mere trial errors, even those of constitutional magnitude."

CAREY V. LINCOLN LOAN CO., 203 OR APP 399, 125 P3d 814 (2006):

Defendant argues that none of ARTICLE SEVEN (AMENDED) is part of the constitution because the procedures that led to its purported adoption did not comply with constitutional standards.

The consequence according to defendant, is that Article VII (Original) is the only valid constitutional provision governing the judiciary.

Thus, the courts that Article VII (Original), names are the only constitutional permissible courts and the legislature had no authority to create this COURT. **[Footnote (F/N)-5]**

> If defendant were correct, then the decisions of this COURT since its creation in 1969 would remain effective as those of a COURT *de facto*. We would, however, have to stop functioning as a COURT with regard to cases in which we have not yet issued an appellate judgment.

The issue before us is not whether defendant's challenge would have succeeded in 1910 but whether it will succeed today. . . . The most significant amendment to ARTICLE SEVEN (AMENDED) for the

purposes of this case, and the one on which we will focus, was the adoption in 1962 of ARTICLE SEVEN (AMENDED) **[2b**. . . or not to be].

In adopting § 2b, the people impliedly validated the portion of § 1 that authorizes the [super] legislature to create inferior COURT. If § 2b is itself valid, it validated any violation of Article XVII, Section 1, that might have occurred in the adoption of § 1.

We have not found any cases specifically dealing with constitutional amendments that rely on defective existing constitutional provisions.

However. . . , the Texas Supreme Court held that the amendment validated the statute and thereby validated the agreement at issue in the case. In doing so, the court described the doctrine of implied validation as providing that a constitutional amendment will impliedly validate an existing 'ACT' that, without the amendment, would be beyond the legislature's power to enact, so long as the validation does not impair either the obligation of contracts or vested rights. . . . Thus, even if the adoption of ARTICLE SEVEN (AMEND[MENTS]) was originally flawed - - - that portion of it is now firmly established against a challenge based on Article XVII, Section 1. [CAREY, 203, *Supra*]

THIS STATE's APPEALS COURT de-facto deliberately disregarded vested rights in Federal Due Process, *i.e.*, impartial judges.

Also, obligations of contracts, are violated by application of 'IMPLIED SUBSEQUENT VALIDATION' - Article IV, Section 22 -- **Section 20**:

> Every Act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title. But if any subject shall be embraced in an Act which shall not be expressed in the title, such Act shall be void only as to as much thereof as shall not be expressed in the title.

THIS STATE's "ONE SUPREME COURT" by 'ITS' decree that ARTICLE SEVEN (AMENDED) is now LAW, is the only COURT de-facto created by, ITSELF. SEE STATE EX REL MADDEN.

CAREY V. LINCOLN LOAN CO., 342 OR 530 (2007) [Made unfit for U.S. cite; 154 p.3d 775]

Defendant argued that ARTICLE SEVEN (AMENDED) - - which provides, in part, that "[t]he judicial power of the state shall be vested in one supreme court and such other courts as may from time to time be created by law" - - was improperly adopted.

The COURT OF APPEALS rejected defendant's argument, holding that, even if the adoption of ARTICLE SEVEN (AMENDED) were flawed, subsequent amendments to that ARTICLE cured any defects. . . . We granted defendant's petition for review to consider defendant's challenge to the constitutionality of the legislation that created the COURT of Appeals. . .

§ 2 provided that the existing judicial system except as expressly changed by the adoption of ARTICLE SEVEN

(AMENDED), would remain as it had been and also granted the [new ONE] SUPREME COURT original jurisdiction in mandamus, quo warranto, and habeas corpus proceedings. § 3 contained a number of provisions respecting the conduct of trials and appeals from trial court decisions.

We now consider whether, assuming that the initial adoption of ARTICLE SEVEN (AMENDED) in 1910 was improper [(*i.e.*, unlawful)] people. . .cured defects. The cases discussed above involve the subsequent validation of defective statutes, rather than defective constitutional provisions.

However, the same rational applies to the people's constitutional authority to amend that organic law: Irregularities in the people's adoption of a constitutional amendment may be cured by subsequent constitutional amendments that the people enact that implicitly validate the earlier, defective amendment. Subsequent validation may not be sufficient to cure an earlier defect if it would have the effect of impairing . . . the obligation of contract or vested rights. . .

**We therefore hold that ARTICLE SEVEN (AMENDED) is NOW valid.** [CAREY, 342 (2007)]
Sheppard, 384 U.S. at 350-351; Turner v. Louisiana, 379 U.S. 466, 473:

> Few, if any, interests under the Constitution are more fundamental than the right to a fair and "impartial" trial, and an outcome affected by extrajudicial statements on jurisdiction would violate that fundament right.

**HART V SAFEWAY INC., A133212 (2008)**:

"Even if CAREY [V. LINCOLN LOAN, 342 OR 530] does not dispose fully of [our bias] appellant's argument regarding the [un]lawfulness of the existence of this COURT, the COURT rejects appellant's argument that his challenge means that 'JUDGES' [usurers] of this COURT [de-facto*F/N] have such a personal [bias] interest in the challenge that they are disqualified [by Federal Law] from deciding the appeal."

*See F/N-5 *CAREY*, 203 *supra*.

See, *SMOTHERS; 332 Or 83* (2001):

**124**. "Oregon remedy clause identified absolute rights respecting person, property, and reputation. 'As to those rights, **the remedy clause provides, in mandatory terms, that remedy by due course of law shall be available to every person in the event of injury**'." [See, Article I, § 10, cited above,]

"The word 'remedy' refers both to **a remedial process** for seeking redress for injury and **to what is required to restore a right that has been injured**"

"legislature may abolish a common-law cause of action, so long as it provides a substitute remedial process in the event of injury to the absolute rights."

"Injury, in turn [spin], is a wrong or harm for which a cause of action existed when the drafters wrote the Oregon Constitution." [Emphasized]

***339**. "ARTICLE I section 10, prescribes how justice must be administered in Oregon by identifying both a **prohibition** (no court shall be secret [undisclosed]) and a directive (justice must be administered openly,

completely, and without purchase or delay)." The "second clause protects rights respecting person, property, and reputation by mandating affirmatively that remedy by due course of law be available in the event of injury to those rights."

Texas v. White, 7 Wall. 700, {74 U.S. " 733} (1869); considered ACTS of CIVIL WAR, GOVERNMENT de-facto, reasoning:

> "That ACTS necessary to peace and good order among citizens which would be valid if emanating from a lawful government must be regarded in general as valid when proceeding from an actual, though unlawful, GOVERNMENT de-facto, and that ACTS in furtherance of support of rebellion against the United States, or intended to defeat the just rights of citizens, and other ACTS of like nature, must, in general, be regarded as invalid and void."

STATE V. COCHRAN, 55 OR 157 (1909):

> A peculiar situation confronts us at the very threshold of this proceeding. The motion is not addressed to those members of this body, who, it is claimed by the plaintiff, are the constitutional judges, but is addressed to the COURT, consisting **de facto** of five persons; each claiming to be a [SUPREME COURT de-facto] JUSTICE.

*Withrow* , 421 U.S. 35, 47.

> **"[P]robability of actual bias . . . is too high to be constitutionally tolerable."**